IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2833 of 2007

Miss Jheel Premal Kacharia & Anr. .. Petitioners

versus

Oriental Bank of Commerce & Ors .. Respondents

...

Mr.Harish Pandya with Mr.S.N.Fadia i/b Smt.Uma S. Fadia i/b Uma S. Fadia for the petitioner.

Mr.Mihir A. Mody i/b M/s.K. Ashar & Co. for respondent nos.2 to 5.

CORAM : S.B. MHASE AND

D.G.KARNIK, JJ

DATED : 26th July 2007.

P.C.:

. Heard learned counsel for the petitioner.

2. The order passed by the Debt Recovery Appellate Tribunal (for short "the DRAT") dated 30th

June 2005 passed in Misc. Appeal no.26 of 2004 is challenged by this petition.

3. The summary of facts which are required to be stated are that the order of the Debt Recovery Tribunal (for short "DRT") fixing the liability has become final as against respondent nos.2 to 5 and the said decree of the DRT is placed under execution. At the execution, property in question was attached under Order 21 Rule 58 of the Code of Civil Procedure. At that stage, petitioner objected for an attachment of the said property on the ground that property belongs to HUF and the minors had a share in the said property and therefore the respondent no.3, who was a karta of the family could not have mortgaged the property wherein the petitioners were having interest. The said objection raised by the petitioner in a proceeding under Order 21 Rule 58 was adjudicated by the executing court viz. the DRT and the said objection was rejected. Since it is a decree in view of the provisions of sub rule (4) of Rule 58 of Order 21, the petitioners preferred an appeal before the DRAT and the said appeal has also been dismissed.

3. Thereafter, the execution proceeded further. At the stage of Order 21 Rule 66, the petitioners have raised the same objection and the same was rejected. Therefore, Misc. Appeal no.26 of 2004 wherein the impugned order was passed was preferred. Since the point has already been adjudicated under a proceedings under Order 21 Rule 58 and has attained finality by way of a decree, the same objection cannot be raised again under Order 21 Rule 66 and therefore, the objection which has been raised under Order 21 Rule 66 was misconceived and so is the appeal misconceived under the facts and circumstances of the case.

4. Petition is without any merit which is hereby rejected.

(D.G. KARNIK, J) (S.B. MHASE, J)